



The Attorney General of Texas

January 18, 1982

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Mr. Philip T. Cole
Attorney for the Public Service
Board of the City of El Paso
1011 North Mesa Street
El Paso, Texas 79902

Open Records Decision No. 304

Re: Whether documents related
to lawsuit by El Paso Public
Service Board against New
Mexico are public information

Dear Mr. Cole:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether documents related to a lawsuit by the El Paso Public Service Board against the State of New Mexico constitute public information. The requestor first sought production of "all documents related to the current dispute between El Paso and New Mexico over water rights which are a matter of public record." In reply to this request, you indicated that compliance with this request was not feasible because it was too broad to enable you to determine which records were being sought. You invited the requestor "to identify with particularity documents which he wished to examine," but state that he has not done so.

In Open Records Decision No. 23 (1974), this office said:

A request made under the Act must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request.

In our opinion, it was proper for you to require the requestor to identify the particular kind of document he sought. See Open Records Decision No. 31 (1974).

The requestor also sought the production of the "originals of all the bills for attorneys fees" submitted by counsel representing El Paso, "working papers or research material," and "all other accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds by government bodies in regard to the above mentioned matter." You state that you have complied with the last part of this request, but have declined to furnish the original itemized bills for attorneys fees as well as the working papers and research material related to the litigation.

As to the originals of the bills for attorneys fees, we believe it is clear that they are excepted from disclosure under section 3(a)(1) of the Open Records Act, as "information made confidential by law." In Open Records Decision No. 210 (1978), this office said that correspondence between an agency and its attorney is excepted from disclosure under section 3(a)(1) "by virtue of the attorney-client privilege." See also, Open Records Decision No. 200 (1978). Furthermore, the working papers and research material prepared by the attorneys for the city of El Paso in preparation for this litigation are also excepted by section 3(a)(1), since Rule 167 of the Texas Rules of Civil Procedure excepts from discovery research and notes:

made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation or defense of such claim or the circumstances out of which the same has arisen.

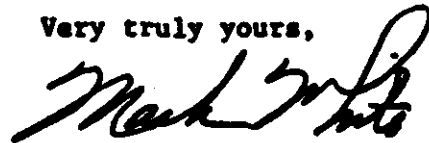
See Hickman v. Taylor, 329 U.S. 495, 510-11 (1974). We conclude that both the original bills for attorneys fees and the working papers of the city's attorneys are excepted from disclosure by section 3(a)(1) of the act. In view of this determination, we need not address the applicability of section 3(a)(3) or any other exception, but we note that the purpose of section 3(a)(3) is to except precisely the kind of information related to pending litigation which is at issue here.

You also ask that we determine whether a governmental body may require that a request for information under the Open Records Act be made in writing. Section 7a of the act provides, in pertinent part:

...the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. (Emphasis added).

In our view, the statute does not require any governmental body to produce information in the absence of a written request.

Very truly yours,


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